

| | |
|---|---|
| TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|---|---|

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court NORTHERN DISTRICT OF OHIO on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.)

| | | |
|-------------------------------------|--------------------------------|---|
| DOCKET NO. XXXXXXXXXX | DATE FILED | U.S. DISTRICT COURT NORTHERN DISTRICT OF OHIO |
| PLAINTIFF Salon Quest, LLC, | | DEFENDANT Peel Friendly Supply Co, Inc, and Peel's Salon Services |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 2,296,873 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| | | |
|----------------------------|---|-------------------------------|
| DATE INCLUDED | INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading | |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above—entitled case, the following decision has been rendered or judgement issued:

| |
|--------------------|
| DECISION/JUDGEMENT |
|--------------------|

| | | |
|------------------------|-------------------------------------|------------------|
| CLERK Geri M. Smith | (BY) DEPUTY CLERK Carlene Kinsey | DATE 3/9/2011 |
|------------------------|-------------------------------------|------------------|

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SalonQuest, LLC,

Plaintiff,

vs.

Peel Friendly Supply Co., Inc.,

and

Peel's Salon Services,

Defendants.

CASE NO.

JUDGE

**VERIFIED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

Plaintiff SalonQuest, LLC for its Verified Complaint states as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks injunctive and monetary relief for acts of trademark infringement and unfair competition under the Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.*, as amended (hereinafter the "Lanham Act"); as well as for breach of contract under Ohio law.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff SalonQuest, LLC ("SalonQuest") is an Ohio limited liability company with its principal place of business at 7185 Chagrin Rd., Chagrin Falls, Ohio 44023.

3. Upon information and belief, Defendant Peel Friendly Supply Co., Inc. ("Friendly") is a corporation with its principal place of business at 1125 East 4th Avenue, Hutchinson, Kansas 67501.

4. Upon information and belief, Defendant Peel's Salon Services ("Salon Services") is a corporation with its principal place of business at 11720 Peel Circle, LaVista, Nebraska 68137.

5. Defendants Friendly and Salon Services (together, "Defendants") are members of SalonQuest.

6. This Court has general and specific jurisdiction over Defendants because Defendants have conducted substantial business in the State of Ohio. Said business includes, but is not limited to, entering into contracts and purchasing products from entities in the State of Ohio, including the contract and the products that are the subject matter of this dispute.

7. This Court has original federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338, because the causes of action set forth below arise under the trademark laws of the United States, Title 15 U.S.C. § 1051, et seq. Jurisdiction for the cause of action under the common law of Ohio arises under 28 U.S.C. § 1367.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and Local Rule 3.8(a).

FACTS

SalonQuest's Trademarks

9. SalonQuest is a manufacturer and distributor of professional hair care products. Hair care product lines owned and sold by SalonQuest include "Aquage" branded products and "Biomega" branded products.

10. SalonQuest owns U.S. Trademark Registration No. 2,296,873 in Class 3 for the "AQUAGE" trademark (the "Aquage Mark") covering "hair care preparations, namely shampoo, conditioner, treatments, tonics, glaze, gel, hair spray, pomade, rinses, styling lotions." The registration is valid, in use, and incontestable.

11. By virtue of its continuous, extensive, and exclusive use of the Aquage Mark in connection with the manufacture and sale of hair care products, SalonQuest has accrued valuable common law rights to use the Aquage Mark in connection with the manufacture and sale of hair care products.

12. Since 1999, SalonQuest has sold tens of millions of dollars of hair care products bearing the Aquage Mark. SalonQuest has advertised and promoted the products featuring the Aquage Mark such that Aquage products have developed goodwill among the consuming public. The "consuming public" in this case, as described below, includes both independently-owned professional hair care salons and private individuals who purchase products featuring the Aquage Mark. The consuming public has come to associate the Aquage Mark with a single source, sponsorship or origin. Aquage has acquired secondary meaning.

13. In 2010, SalonQuest developed, adopted and put into use the trade name "Biomega," together with an inherently distinctive, highly-stylized "Biomega" logo (together, the "Biomega Mark"). Since then, SalonQuest has continually used the Biomega Mark in interstate commerce, in connection with the manufacture and sale of hair care products.

14. On January 8, 2010, SalonQuest filed an application with the United States Patent and Trademark Office to register the Biomega Mark on the Principal Register. SalonQuest considers the Biomega Mark (including the associated goodwill) to be a valuable asset.

15. SalonQuest has continually used the Biomega Mark to identify and distinguish its products from those made and sold by others, by, among other things, prominently displaying the Biomega Mark on its products. In addition, SalonQuest displays the Biomega Mark on all promotional and advertising materials used to market and sell Biomega products in interstate commerce.

16. SalonQuest has advertised, promoted, and sold products featuring the Biomega Mark such that Biomega products have developed goodwill among the consuming public. The “consuming public” in this case, as described below, includes both independently-owned professional hair care salons and private individuals who purchase products featuring the Biomega Mark. The consuming public has come to associate the Biomega Mark with a single source, sponsorship or origin. Biomega has acquired secondary meaning.

SalonQuest’s Exclusive Sales Model

17. The products bearing the Aquage Mark and the Biomega Mark (collectively, the “Products”) are designed and marketed as “professional hair care products.” Other well-known lines of professional hair care products include Matrix, Paul Mitchell, and Aveda.

18. Pursuant to SalonQuest’s business model, the Products are intended to be sold exclusively through independently-owned salons and spas. The Products are not intended to be sold through national salon chains or through retail chains such as Walgreens or CVS.

19. Professional beauty products, including the Products, are desirable to salon customers in large measure because the products are sold only in professional salons and, thus, are perceived by the purchasing public to be more exclusive and fashionable. When professional beauty products are “diverted” (as the practice is known in the industry) and sold by drug stores and mass merchandisers, the image and value of the professional beauty products is diminished in the eyes of the salon customer. Consequently, SalonQuest’s business model, and the goodwill value of the Aquage Mark and the Biomega Mark (together, the “SalonQuest-Owned Marks”) are dependent in large part on this exclusive sales method. SalonQuest devotes significant resources to maintaining the integrity of this exclusive sales method, and to preventing the diversion of the Products.

SalonQuest's Exclusive Distribution Model

20. SalonQuest sells the Products through distributors. The distributors, in turn, sell the Products either directly to independent salons, or through professional beauty stores at which only licensed cosmetologists can purchase products. Non-professional members of the retail public may purchase the Products only at independent salons.

21. All of the distributors have an exclusive geographical territory of distribution. In a very small number of areas contained within a few distributors' overall territories, SalonQuest permits dual distribution. This virtual exclusivity is critical to the success of a distributor, and therefore is critical to the success of the Products and the goodwill value of the SalonQuest-Owned Marks. Accordingly, SalonQuest devotes significant resources to maintaining the exclusivity of the Products' distribution in various geographical territories.

22. Each distributor is granted a written license to use the SalonQuest-Owned Marks during the term of their distributorship.

The Distributorship Agreements with Friendly and Salon Services

23. On or about March 4, 1999, Defendant Friendly entered into a distributorship agreement whereby Friendly agreed to purchase and distribute, and SalonQuest agreed to sell, certain SalonQuest products. In that agreement, Friendly is the Distributor and SalonQuest is the Company. When Friendly and SalonQuest entered that agreement, a contract was formed (the "Friendly Distributorship Agreement"). A true and accurate copy of the Friendly Distributorship Agreement is attached as **Exhibit A**. Under the Friendly Distributorship Agreement, Friendly was granted the exclusive right to distribute the Products in Kansas, Missouri, and Northern Oklahoma during the term of the Friendly Distributorship Agreement.

24. On or about March 4, 1999, Defendant Salon Services entered into a distributorship agreement whereby Salon Services agreed to purchase and distribute, and

SalonQuest agreed to sell, certain SalonQuest products. In that agreement, Salon Services is the Distributor and SalonQuest is the Company. When Salon Services and SalonQuest entered that agreement, a contract was formed (the "Salon Services Distributorship Agreement"). A true and accurate copy of the Salon Services Distributorship Agreement is attached as **Exhibit B**. Under the Salon Services Distributorship Agreement, Salon Services was granted the exclusive right to distribute the Products in Colorado, Iowa, Nebraska, portions of New Mexico and portions of Wyoming during the term of the Salon Services Distributorship Agreement. Salon Services was granted non-exclusive distribution rights in South Dakota.

25. Other than the distinct geographic sales territories described above, the terms of the Friendly Distributorship Agreement and the Salon Services Distributorship Agreement (together, the "Distributorship Agreements") are identical for all purposes relevant to this Complaint.

The Trademark License Provisions of the Distributorship Agreements

26. Section 6 of the Distributorship Agreements granted the Defendants the right to "use the trademarks and tradenames associated" with the Products "for the term of the [Distributorship] Agreement."

The Termination Provisions of the Distributorship Agreements

27. The Distributorship Agreements provided for certain circumstances under which the parties could terminate the Distributorship Agreements. Pursuant to Section 12(b), Salon Quest may "terminate the term of [the] Agreement for Cause by giving Distributor written notice of termination at least thirty days prior to the effective date of termination specified in the notice."

28. "Cause" as defined under the Distributorship Agreements includes "assignment by Distributor of this Agreement or of any of Distributor's rights or obligations under this

Agreement to a person or persons other than [pre-approved Assignees or Transferees] without the prior written consent of [SalonQuest]” (Distributorship Agreements § 12(b)(ii).)

29. “Cause” as defined under the Distributorship Agreements also includes “transfer of controlling interest in, or change in control of, Distributor (or the parent entity, if any, of Distributor) to a person or persons other than [pre-approved Assignees or Transferees] without the prior written consent of [SalonQuest]” (Distributorship Agreements § 12(b)(iii).)

Defendants’ Assignment of the Distributorship Agreements and/or Change in Controlling Interests, and SalonQuest’s Termination of the Distributorship Agreements

30. On or before December 23, 2010, Defendants Friendly and Salon Services each assigned their Distributorship Agreement and/or sold their assets to a person or persons other than a pre-approved Assignee or Transferee, without the prior written consent of SalonQuest. Aware that such actions would permit SalonQuest to terminate their distributorships “for cause,” Defendants’ representatives contacted representatives of SalonQuest, to request that the Distributorship Agreements not be terminated. For various business reasons, SalonQuest chose not to acquiesce to this request.

31. On or about December 23, 2010, SalonQuest provided Friendly and Salon Services written notice of SalonQuest’s intent to terminate the Distributorship Agreements. The effective date of termination was, in each case, January 22, 2011. True and accurate copies of the termination letters are attached as **Exhibits C**.

Defendants’ Obligations Upon Termination

32. The Distributorship Agreements include provisions to be followed in the event the Agreements are terminated. Specifically, Section 13 of the Distributorship Agreements provides that:

- (a) Termination of the term of this Agreement shall not release either party from . . . any obligation to the other party accrued prior to the termination or

required by this Agreement to be performed after termination

(b) Upon the effective date of termination of the term of this Agreement, Distributor shall:

(i) permanently discontinue buying, selling or otherwise dealing in the Products and making any and all representations or implications that it is a distributor of the Products or otherwise affiliated in any way with Company;

. . .

(iii) upon request by Company and within three (3) business days of the request, allow representatives of Company access to Distributor's warehouses for the purposes of conducting an inventory and inspection of all Products in Distributor's possession and, if requested by Company, cooperate with Company to assemble and package all Products irrespective of condition for return shipment to Company, which Products Company shall be obligated to purchase in accordance with Section 13(c);

(iv) if requested by Company, and without limiting Company's right to inventory and inspect Products pursuant to Section 13(b)(iii), return to Company, by prepaid shipment, any and all Products purchased by Distributor from Company irrespective of condition, which Products Company shall be obligated to purchase in accordance with Section 13(c);

(v) pay all sums then owed by Distributor to Company net of any amounts acknowledged by Company to be owed by Company to Distributor, including credits for returns; and

(vi) discontinue using and return to Company any and all copyrighted material furnished by Company and any and all embodiments of or references to Company's trademarks, trade names or other symbols, including, by way of example but not limitation, signs, stationery, supplies, advertisements, displays, brochures and posters.

33. Section 13(c) of the Distributorship Agreements likewise provides that:

within 30 days of the effective date of termination of the term of this Agreement, Distributor shall return to Company Distributor's remaining inventory of Products. Distributor shall return and Company shall purchase Distributor's entire inventory of Products at a price equal to the lower of (on a Product-by-Product basis) the price paid by Distributor for the Products or the wholesale market value of the Products. Distributor acknowledges that the wholesale market value of Products not in good, resalable condition may be

zero or substantially less than the price paid by Distributor for such Products. Any payments required by this Section 13(c) shall be conditioned on the completion of Distributor's obligations under Section 13 and shall be made no later than thirty days after the effective date of termination.

34. As set forth above, the Distributorship Agreements *do not* permit Defendants to sell or liquidate any existing inventory upon termination. To the contrary, the Distributorship Agreements expressly provide that, upon termination, Defendants must:

- immediately stop selling product and immediately stop making representations or implications that they are distributors of the Products (§ 13(b)(i));
- upon request, and within three business days, permit SalonQuest representatives to access Defendants' warehouses to conduct an inventory and/or to assemble and package the Products (§ 13(b)(iii));
- Upon request, return all Product to SalonQuest, via prepaid shipment (§ 13(b)(iv));
- discontinue using and return to SalonQuest any and all embodiments of or references to SalonQuest's trademarks, trade names or other symbols (§ 13(b)(vi)); and
- within 30 days of the effective date of termination, return all Products for repurchase by SalonQuest (§13(c).)

Defendants' Refusal to Comply With Their Respective Obligations Upon Termination

35. On or about January 21, 2011, SalonQuest sent letters to Defendants invoking certain of its rights under Section 13 of the Distributorship Agreements. Specifically, SalonQuest demanded, pursuant to Sections 13(b)(i) and (b)(vi), that Defendants discontinue selling, promoting, or advertising SalonQuest products no later than January 22, 2011. SalonQuest likewise demanded, pursuant to Section 13(b)(iii), that SalonQuest representatives be permitted access to Defendants' warehouses within three (3) business days for purposes of conducting an inventory, inspection, and/or packaging of Products for return to SalonQuest. True and accurate copies of these demand letters are attached as **Exhibit D**.

36. On or about January 24, 2011, SalonQuest learned—through independent inspection by SalonQuest representatives—that the Products were still being sold by Defendants,

in violation of Sections 13(b)(i) and (b)(vi) of the Distributorship Agreements, and in violation of SalonQuest's common law and statutory trademark rights.

37. Also on or about January 24, 2011, SalonQuest sent Defendants letters demanding that Defendants immediately cease and desist from selling the Products, and demanding that Defendants permit SalonQuest representatives access to Defendants' warehouses for the purpose of conducting the inspection, inventory, and collection of Products contemplated by Section 13(b)(iii) of the Distributorship Agreements no later than January 26, 2011. True and accurate copies of these demand letters are attached as **Exhibit E**.

38. On or about January 26, 2011, Defendants sent SalonQuest a joint letter stating that they would not comply with the terms of the Distributorship Agreements. Specifically, Defendants stated that they intend to materially breach the Distributorship Agreements in the following ways:

- Defendants refused to permit inspection of inventory in their warehouses by January 26, 2011, and instead told SalonQuest it would have to wait until "the week of February 21, 2011 to conduct the inspection (in breach of Section 13(b)(iii));
- Defendants refused to release the Products to SalonQuest unless and until SalonQuest issues a "wire transfer" which takes into account numerous purported obligations which are disputed by SalonQuest (in breach of Sections 13(b)(iii) and (b)(iv)); and
- Defendants refused to return the inventory of remaining products within thirty days of the effective date of termination (January 22, 2011) of the Distributorship Agreements (in breach of Section 13(c)).

A true and accurate copy of Defendants' refusal letter is attached as **Exhibit F**. Defendants' January 26, 2011 letter constitutes a material breach of the Distributorship Agreements.

39. SalonQuest has obtained evidence to demonstrate that Defendants continued to promote and sell the Products at least through January 27, 2011. Attached hereto as **Exhibit G** are true and accurate copies of sales receipts reflecting purchases of Products from Defendants in Sioux City, Iowa on January 27, 2011; in Ankeny, Iowa on January 27, 2011; and in Lincoln,

Nebraska on January 27, 2011. In addition, SalonQuest representatives contacted Defendants' locations in Colorado, Iowa, Missouri and Nebraska on January 25, 2011 and was advised that the locations were still offering the Products for sale.

40. Upon information and belief, Defendants continued to promote and sell the Products after January 27, 2011, and are still continuing to sell the Products. As of February 1, 2011, Defendant Salon Services continued to advertise, as being for sale, products bearing the Aquage Mark in its online catalogue, available at <http://www.peelssalon services.com/catalog>.

41. Defendants' continued promotion and sale of Products on or after January 22, 2011 constitutes a material breach of the Distributorship Agreements, constitutes unfair competition, and has infringed the SalonQuest-Owned Marks.

42. Upon information and belief, Defendants' acts of infringement and unfair competition are willful and deliberate and are being engaged in with an intent to reap the benefit of SalonQuest's good will.

43. All sales of the Products made by Defendants on or after January 22, 2011 have caused and will continue to cause irreparable harm to SalonQuest. Such irreparable harm includes, but is not limited to, confusion as to the duly-authorized source, sponsorship or origin of the Products, damage to SalonQuest's exclusive sales and distributorship business models, and damage, therefore, to the value of the Products and the SalonQuest-Owned Marks. For example, SalonQuest has appointed a new distributor for the Defendants' prior sales territories. The ability of the new distributor to effectively enter the market, and to effectively represent the Products and the SalonQuest Marks, has been and will continue to be irreparably impeded if Defendants are allowed to sell Products.

44. Defendants' refusal to allow SalonQuest to conduct an inventory of the Products in Defendants' possession within three (3) days of January 22, 2011, has caused and will continue to cause SalonQuest irreparable harm. SalonQuest included the right to inspect and conduct an inventory of the Products within (3) days of termination in the Distributorship Agreements expressly so that it could maintain control over its Products and the SalonQuest-Owned Marks. In the absence of an inspection, SalonQuest has no effective means by which to determine the amount of Products in Defendants' possession. Without such information, SalonQuest has no effective means by which to (i) prevent the diversion of Products; (ii) prevent terminated distributors from continuing to sell the Products; or (iii) maintain control over the use of the SalonQuest-Owned Marks.

45. In addition to the infringement, unfair competition, and material breaches outlined above, to date, SalonQuest has provided Products in the aggregate amount of \$321,888.11 for which SalonQuest invoiced Defendants and for which Defendants have not paid, in breach of Section 13(b)(5) of the Distributorship Agreements. The amount owed by Defendant Friendly is \$62,320.56; the amount owed by Defendant Salon Services is \$259,567.55.

COUNT I

(Federal Trademark Infringement – Violation of § 32(1) of the Federal Trademark Act)

46. SalonQuest hereby incorporates by reference all of the allegations contained in the preceding paragraphs as if fully rewritten herein.

47. SalonQuest owns the mark Aquage and a federal trademark registration on it. (Federal Registration No. 2296973 in Class 3.) SalonQuest owns the mark Aquage for, among other things, distribution of products containing the Aquage mark in commerce. A true copy of the Certificate of Registration is annexed hereto as **Exhibit H**. The registration is valid, in use, and incontestable.

48. Despite SalonQuest's well-known prior common law and statutory rights to the exclusive use of the mark Aquage, Defendants, without SalonQuest's authorization, have used the mark "Aquage" after the termination of the Distributorship Agreements and the termination of those provisions granting a license to promote their business and in connection with the sale, offering for sale, distribution, and advertising of "Aquage" products. Defendants are continuing such use, and unless enjoined by this Court will continue such use. Said conduct of Defendants was and is willful and wanton.

49. Such unauthorized use by Defendants of the Aquage mark reproduces, copies, colorably imitates, and constitutes infringement of SalonQuest's registered trademark Aquage. Such use is likely to cause confusion, deception, and mistake, in violation of section 32(1) of the Lanham Act, Title 15, U.S.C. § 1114(1), to the damage and irreparable injury of SalonQuest.

COUNT II

(Federal Unfair Competition – Violation of § 43(a) of the Federal Trademark Act)

50. SalonQuest is the owner of all right, title and interest in and to the Aquage brand, including the products bearing the Aquage Mark. SalonQuest has advertised and distributed products bearing the Aquage Mark, and has otherwise exploited and popularized the lines of products. Products bearing the Aquage Mark have grown, and continue to grow dramatically in popularity, so that to date, tens of millions of dollars products featuring the Aquage Mark have been sold.

51. The Aquage Mark is distinctive and well-known to the consuming public, and the consuming public has come to associate the Aquage mark with a single source, sponsorship or origin.

52. Since the termination of the Distributorship Agreements and continuing to date, Defendants, without SalonQuest's consent, has caused certain products bearing the Aquage Mark

to enter into interstate commerce and/or be transported or used in commerce.

53. The conduct of Defendants in using the likeness and name of the Products bearing the Aquage Mark in conjunction with their businesses after the termination of the Distributorship Agreements falsely designates the origin or sponsorship of the Products and tends falsely to represent that Defendants have been sponsored, approved or licensed by SalonQuest or are in some way affiliated or connected with the Aquage product line. Such conduct of Defendants is likely to confuse, mislead and deceive Defendants' customers, purchasers, and members of the public as to the origin of the Products.

54. Defendants' use of the Aquage Mark after the termination of the Distributorship Agreement is willfully done with knowledge of SalonQuest's rights and that said conduct would be likely to confuse, mislead and deceive purchasers and members of the public as alleged above.

55. Defendants have failed to cease and desist from this wrongful conduct, although SalonQuest has demanded that Defendants do so.

56. Defendants' conduct has caused and will continue to cause irreparable damage to SalonQuest, to the Aquage Mark and brand, and to the business, reputation and goodwill of SalonQuest.

COUNT III

(Federal Unfair Competition – Violation of § 43(a) of the Federal Trademark Act)

57. SalonQuest is the owner of all right, title and interest in and to the Biomega brand, including the products bearing the Biomega Mark. SalonQuest has advertised and distributed products bearing the Biomega Mark, and has otherwise exploited and popularized the lines of products. Products bearing the Biomega Mark have grown, and continue to grow

dramatically in popularity. To date, SalonQuest has devoted tens of thousands of dollars to developing, marketing, and promoting the Biomega Mark in interstate commerce.

58. The Biomega Mark is distinctive and well-known to the consuming public, and the consuming public has come to associate the Biomega Mark with a single source, sponsorship or origin.

59. Since the termination of the Distributorship Agreements and continuing to date, Defendants, without SalonQuest's consent, has caused certain products bearing the Biomega Mark to enter into interstate commerce and/or be transported or used in commerce.

60. The conduct of Defendants in using the likeness and name of the Products bearing the Biomega Mark in conjunction with their businesses after the termination of the Distributorship Agreements tends falsely to represent that Defendants have been sponsored, approved or licensed by SalonQuest or are in some way affiliated or connected with the Biomega product line. Such conduct of Defendants is likely to confuse, mislead and deceive Defendants' customers, purchasers, and members of the public as to the origin of the Products.

61. Defendants' use of the Biomega Mark after the termination of the Distributorship Agreement is willfully done with knowledge of SalonQuest's rights and that said conduct would be likely to confuse, mislead and deceive purchasers and members of the public as alleged above.

62. Defendants have failed to cease and desist from this wrongful conduct, although SalonQuest has demanded that Defendants do so.

63. Defendants' conduct has caused and will continue to cause irreparable damage to SalonQuest, to the Biomega Mark and brand, and to the business, reputation and goodwill of SalonQuest.

COUNT IV
(Breach of Contract Claim Against Defendant Friendly)

64. SalonQuest hereby incorporates by reference all of the allegations contained in the preceding paragraphs as if fully rewritten herein.

65. Pursuant to the Friendly Distributorship Agreement, SalonQuest in fact provided Products to Friendly and invoiced Friendly for Products provided. Under the Friendly Distributorship Agreement, Friendly was and is obligated to pay SalonQuest for the Products supplied by SalonQuest to Friendly. A true and correct copy of Friendly's January statement reflecting balances due by Friendly is attached as **Exhibit I**.

66. Also pursuant to the Friendly Distributorship Agreement, Friendly was and is obligated to follow the termination provisions set forth in Section 13.

67. Friendly has materially breached the Friendly Distributorship Agreement by failing to pay SalonQuest for the Products and by failing to follow the termination provisions contained in Section 13.

68. Upon information and belief, Friendly does not dispute the facts of SalonQuest's claim.

69. SalonQuest has fully performed all of its obligations under the Friendly Distributorship Agreement and has complied with the contract in all material respects.

70. As a direct and proximate result of Friendly's material breach of the Friendly Distributorship Agreement, SalonQuest has been damaged in an amount to be demonstrated at trial, plus interest.

COUNT V
(Breach of Contract Claim Against Defendant Salon Services)

71. SalonQuest hereby incorporates by reference all of the allegations contained in

the preceding paragraphs as if fully rewritten herein.

72. Pursuant to the Salon Services Distributorship Agreement, SalonQuest in fact provided Products to Salon Services and invoiced Salon Services for Products provided. Under the Salon Services Distributorship Agreement, Salon Services was and is obligated to pay SalonQuest for the Products supplied by SalonQuest to Salon Services. A true and correct copy of Salon Services's January statement reflecting balances due by Salon Services is attached as **Exhibit J**.

73. Also pursuant to the Salon Services Distributorship Agreement, Salon Services was and is obligated to follow the termination provisions set forth in Section 13.

74. Salon Services has materially breached the Salon Services Distributorship Agreement by failing to pay SalonQuest for the Products and by failing to follow the termination provisions contained in Section 13.

75. Upon information and belief, Salon Services does not dispute the facts of SalonQuest's claim.

76. SalonQuest has fully performed all of its obligations under the Salon Services Distributorship Agreement and has complied with the contract in all material respects.

77. As a direct and proximate result of Salon Services's material breach of the Salon Services Distributorship Agreement, SalonQuest has been damaged in an amount to be demonstrated at trial, plus interest.

PRAYER FOR RELIEF


WHEREFORE, SalonQuest respectfully prays that this Court:

- A. Immediately issue an order temporarily restraining and preliminarily enjoining and prohibiting Defendants and any principals, officers, agents, servants, employees, attorneys, successors, and assigns, and all those in active privity or concert with Defendants who receive actual notice of said order from:
- i. destroying, buying, selling, or otherwise dealing in products bearing the SalonQuest-Owned Marks;
 - ii. imitating, copying, duplicating and otherwise making any use of the SalonQuest-Owned Marks in connection with any goods or services;
 - iii. using any simulation, reproduction, or any unauthorized copy or colorable imitation of the SalonQuest-Owned Marks in connection with the promotion, advertisement, display, sale, offering for sale, or any other marketing of any product or service;
 - iv. making any statement which can or is likely to lead the trade or public, or individual members thereof, to mistakenly believe that Defendants are an authorized distributor of products bearing the SalonQuest-Owned Marks
 - v. causing likelihood of confusion or injury to SalonQuest's business reputation and to the distinctiveness of the SalonQuest-Owned Marks by unauthorized use of the same;
 - vi. engaging in any other activity constituting unfair competition or infringement of the SalonQuest-Owned Marks, or SalonQuest's rights in, or to use or exploit, the same;
 - vii. prohibiting SalonQuest from immediately conducting an inventory and inspection of the Products in Defendants' possession;

- viii. preventing the return, by prepaid shipment, of any and all Products remaining in Defendants' possession;
 - ix. assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in subparagraphs (i) through (viii) above.
- B. After a hearing on the merits, issue a Permanent Injunction under the terms set forth in subdivision (A) above.
- C. After a hearing on the merits, award SalonQuest (i) compensatory damages of at least \$321,888.11, plus applicable interest; and (ii) treble or exemplary damages, actual damages and profits arising from Defendants' infringement or statutory damages at the election of SalonQuest, pre- and post-judgment interest, and SalonQuest's costs and attorneys' fees associated with this action.
- D. Grant SalonQuest such other and further relief as this Court deems to be reasonable, necessary and just.

Dated: February 2, 2011

Respectfully submitted,



John D. Parker (0025770)

jparker@bakerlaw.com

Lora M. Reece (0075593)

lreece@bakerlaw.com

Melissa A. DeGaetano (0080567)

mdegaetano@bakerlaw.com

Baker & Hostetler LLP

PNC Center

1900 East Ninth Street, Suite 3200

Cleveland OH 44114-3482

216.621.0200 (Telephone)

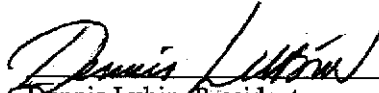
216.696.0740 (Facsimile)

Attorneys for Plaintiff SalonQuest, LLC

VERIFICATION

STATE OF OHIO)
COUNTY OF CUYAHOGA) SS:

Dennis Lubin, being first duly sworn, states that he is President of SalonQuest, that he has read the foregoing Verified Complaint, and that the allegations contained therein are true according to his own personal knowledge or according to his information and belief.


Dennis Lubin, President

SWORN TO and subscribed in my presence this 2nd day of February, 2011.

503234932.4





My Commission Expires
October 30, 2014